

1                                   **EMPLOYMENT BACKGROUND CHECKS**

2   2018 GENERAL SESSION

3   STATE OF UTAH

4                                   **Chief Sponsor: Wayne A. Harper**

5                                   House Sponsor: Eric K. Hutchings

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7 **LONG TITLE**

8 **General Description:**

9           This bill provides certain state agencies with the authority to require background checks  
10 for employees, contractors, and volunteers.

11 **Highlighted Provisions:**

12           This bill:

13           ▶ provides the following entities with the authority to conduct local, regional, and  
14 national background checks for employees, contractors, appointees, and volunteers,  
15 as applicable:

- 16           • Department of Environmental Quality;
- 17           • Department of Financial Institutions;
- 18           • Department of Health;
- 19           • Department of Human Resource Management;
- 20           • Department of Workforce Services;
- 21           • Division of Purchasing;
- 22           • governor's office;
- 23           • State Auditor;
- 24           • State Tax Commission; and
- 25           • Utah Science Technology and Research Governing Authority;

26           ▶ requires the Bureau of Criminal Identification to provide agencies with the results of  
27 the background checks; and

28           ▶ makes technical and conforming changes.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **35A-1-102**, as last amended by Laws of Utah 2016, Chapter 226

36 **53-10-108**, as last amended by Laws of Utah 2015, Chapters 255 and 389

37 **63A-3-201**, as last amended by Laws of Utah 2016, Chapter 298

38 ENACTS:

39 **7-1-212**, Utah Code Annotated 1953

40 **19-1-308**, Utah Code Annotated 1953

41 **26-1-17.1**, Utah Code Annotated 1953

42 **35A-1-104.1**, Utah Code Annotated 1953

43 **59-1-206.1**, Utah Code Annotated 1953

44 **63A-2-106**, Utah Code Annotated 1953

45 **63M-2-304**, Utah Code Annotated 1953

46 **67-3-10**, Utah Code Annotated 1953



48 *Be it enacted by the Legislature of the state of Utah:*

49 Section 1. Section **7-1-212** is enacted to read:

50 **7-1-212. Background checks for employees.**

51 (1) As used in this section, "bureau" means the Bureau of Criminal Identification  
52 created in Section **53-10-201**.

53 (2) Beginning July 1, 2018, the department shall require current employees in, and all  
54 applicants for, the following positions to submit to a fingerprint-based local, regional, and  
55 national criminal history background check and ongoing monitoring as a condition of  
56 employment:

57 (a) agency information security managers;

58 (b) financial institutions examiners;

59 (c) financial institutions managers; and

60 (d) financial institutions specialists.

61 (3) Each individual in a position listed in Subsection (2) shall provide a completed  
62 fingerprint card to the department upon request.

63 (4) The department shall require that an individual required to submit to a background  
64 check under Subsection (3) provide a signed waiver on a form provided by the department that  
65 meets the requirements of Subsection [53-10-108](#)(4).

66 (5) For a noncriminal justice background search and registration in accordance with  
67 Subsection [53-10-108](#)(13), the department shall submit to the bureau:

68 (a) the applicant's personal identifying information and fingerprints for a criminal  
69 history search of applicable local, regional, and national databases; and

70 (b) a request for all information received as a result of the local, regional, and  
71 nationwide background check.

72 (6) The department is responsible for the payment of all fees required by Subsection  
73 [53-10-108](#)(15) and any fees required to be submitted to the Federal Bureau of Investigation by  
74 the bureau.

75 (7) The department may make rules in accordance with Title 63G, Chapter 3, Utah  
76 Administrative Rulemaking Act, that:

77 (a) determine how the department will assess the employment status of an individual  
78 upon receipt of background information; and

79 (b) identify the appropriate privacy risk mitigation strategy to be used in accordance  
80 with Subsection [53-10-108](#)(13)(b).

81 Section 2. Section **19-1-308** is enacted to read:

82 **19-1-308. Background checks for employees.**

83 (1) As used in this section, "bureau" means the Bureau of Criminal Identification  
84 created in Section [53-10-201](#).

85 (2) Beginning July 1, 2018, the department shall require all appointees and applicants

86 for the following positions to submit to a fingerprint-based local, regional, and national  
87 criminal history background check and ongoing monitoring as a condition of employment:

88 (a) administrative services managers;

89 (b) financial analysts;

90 (c) financial managers; and

91 (d) schedule AB and AD employees, in accordance with Section [67-19-15](#), in  
92 appointed positions.

93 (3) Each appointee or applicant for a position listed in Subsection (2) shall provide a  
94 completed fingerprint card to the department upon request.

95 (4) The department shall require that an individual required to submit to a background  
96 check under Subsection (3) provide a signed waiver on a form provided by the department that  
97 meets the requirements of Subsection [53-10-108](#)(4).

98 (5) For a noncriminal justice background search and registration in accordance with  
99 Subsection [53-10-108](#)(13), the department shall submit to the bureau:

100 (a) the applicant's personal identifying information and fingerprints for a criminal  
101 history search of applicable local, regional, and national databases; and

102 (b) a request for all information received as a result of the local, regional, and  
103 nationwide background check.

104 (6) The department is responsible for the payment of all fees required by Subsection  
105 [53-10-108](#)(15) and any fees required to be submitted to the Federal Bureau of Investigation by  
106 the bureau.

107 (7) The department may make rules in accordance with Title 63G, Chapter 3, Utah  
108 Administrative Rulemaking Act, that:

109 (a) determine how the department will assess the employment status of an individual  
110 upon receipt of background information; and

111 (b) identify the appropriate privacy risk mitigation strategy to be used in accordance  
112 with Subsection [53-10-108](#)(13)(b).

113 Section 3. Section **26-1-17.1** is enacted to read:

114 **26-1-17.1. Background checks for employees.**

115 (1) As used in this section, "bureau" means the Bureau of Criminal Identification  
116 created in Section [53-10-201](#).

117 (2) Beginning July 1, 2018, the department may require a fingerprint-based local,  
118 regional, and national criminal history background check and ongoing monitoring of:

119 (a) all staff, contracted employees, and volunteers who:

120 (i) have access to protected health information or personal identifying information;

121 (ii) have direct contact with patients, children, or vulnerable adults as defined in  
122 Section [62A-2-120](#);

123 (iii) work in areas of privacy and data security;

124 (iv) handle financial information, including receipt of funds, reviewing invoices,  
125 making payments, and other types of financial information; and

126 (v) perform audit functions, whether internal or external, on behalf of the department;  
127 and

128 (b) job applicants who have been offered a position with the department and the job  
129 requirements include those described in Subsection (2)(a).

130 (3) Each individual in a position listed in Subsection (2) shall provide a completed  
131 fingerprint card to the department upon request.

132 (4) The department shall require that an individual required to submit to a background  
133 check under Subsection (3) provide a signed waiver on a form provided by the department that  
134 meets the requirements of Subsection [53-10-108](#)(4).

135 (5) For a noncriminal justice background search and registration in accordance with  
136 Subsection [53-10-108](#)(13), the department shall submit to the bureau:

137 (a) the applicant's personal identifying information and fingerprints for a criminal  
138 history search of applicable local, regional, and national databases; and

139 (b) a request for all information received as a result of the local, regional, and  
140 nationwide background check.

141 (6) The department is responsible for the payment of all fees required by Subsection

142 53-10-108(15) and any fees required to be submitted to the Federal Bureau of Investigation by  
143 the bureau.

144 (7) The department may make rules in accordance with Title 63G, Chapter 3, Utah  
145 Administrative Rulemaking Act, that:

146 (a) determine how the department will assess the employment status of an individual  
147 upon receipt of background information;

148 (b) determine the type of crimes and the severity that would disqualify an individual  
149 from holding a position; and

150 (c) identify the appropriate privacy risk mitigation strategy to be used in accordance  
151 with Subsection 53-10-108(13)(b).

152 Section 4. Section **35A-1-102** is amended to read:

153 **35A-1-102. Definitions.**

154 Unless otherwise specified, as used in this title:

155 (1) "Client" means an individual who the department has determined to be eligible for  
156 services or benefits under:

157 (a) Chapter 3, Employment Support Act; and

158 (b) Chapter 5, Training and Workforce Improvement Act.

159 (2) "Department" means the Department of Workforce Services created in Section  
160 **35A-1-103**.

161 (3) "Economic service area" means an economic service area established in accordance  
162 with Chapter 2, Economic Service Areas.

163 (4) "Employment assistance" means services or benefits provided by the department  
164 under:

165 (a) Chapter 3, Employment Support Act; and

166 (b) Chapter 5, Training and Workforce Improvement Act.

167 (5) "Employment center" is a location in an economic service area where the services  
168 provided by an economic service area under Section **35A-2-201** may be accessed by a client.

169 (6) "Employment counselor" means an individual responsible for developing an

170 employment plan and coordinating the services and benefits under this title in accordance with  
171 Chapter 2, Economic Service Areas.

172 (7) "Employment plan" means a written agreement between the department and a client  
173 that describes:

174 (a) the relationship between the department and the client;

175 (b) the obligations of the department and the client; and

176 (c) the result if an obligation is not fulfilled by the department or the client.

177 (8) "Executive director" means the executive director of the department appointed  
178 under Section [35A-1-201](#).

179 (9) "Government entity" means the state or any county, municipality, local district,  
180 special service district, or other political subdivision or administrative unit of the state, a state  
181 institution of higher education as defined in Section [53B-2-101](#), or a local education agency as  
182 defined in Section [53A-30-102](#).

183 (10) "Public assistance" means:

184 (a) services or benefits provided under Chapter 3, Employment Support Act;

185 (b) medical assistance provided under Title 26, Chapter 18, Medical Assistance Act;

186 (c) foster care maintenance payments provided from the General Fund or under Title  
187 IV-E of the Social Security Act;

188 (d) SNAP benefits; and

189 (e) any other public funds expended for the benefit of a person in need of financial,  
190 medical, food, housing, or related assistance.

191 (11) "SNAP" means the federal "Supplemental Nutrition Assistance Program" under  
192 Title 7, U.S.C. Chapter 51, Supplemental Nutrition Assistance Program, formerly known as the  
193 federal Food Stamp Program.

194 (12) "SNAP benefit" or "SNAP benefits" means a financial benefit, coupon, or  
195 privilege available under SNAP.

196 (13) "Stabilization" means addressing the basic living, family care, and social or  
197 psychological needs of the client so that the client may take advantage of training or

198 employment opportunities provided under this title or through other agencies or institutions.

199 (14) "Vulnerable populations" means children or adults with a life situation that  
200 substantially affects that individual's ability to:

- 201 (a) provide personal protection;
- 202 (b) provide necessities such as food, shelter, clothing, or mental or other health care;
- 203 (c) obtain services necessary for health, safety, or welfare;
- 204 (d) carry out the activities of daily living;
- 205 (e) manage the adult's own financial resources; or
- 206 (f) comprehend the nature and consequences of remaining in a situation of abuse,  
207 neglect, or exploitation.

208 Section 5. Section **35A-1-104.1** is enacted to read:

209 **35A-1-104.1. Background checks for employees.**

210 (1) As used in this section, "bureau" means the Bureau of Criminal Identification  
211 created in Section [53-10-201](#).

212 (2) Beginning July 1, 2018, the department may require current employees in, and all  
213 applicants for, the following positions to submit to a fingerprint-based local, regional, and  
214 national criminal history background check and ongoing monitoring as a condition of  
215 employment:

- 216 (a) employees that access or may access federal tax information; and
- 217 (b) employees serving or interacting with vulnerable populations as defined in Section  
218 [35A-1-102](#).

219 (3) Each individual in a position listed in Subsection (2) shall provide a completed  
220 fingerprint card to the department upon request.

221 (4) The department shall require that an individual required to submit to a background  
222 check under Subsection (3) provide a signed waiver on a form provided by the department that  
223 meets the requirements of Subsection [53-10-108](#)(4).

224 (5) For a noncriminal justice background search and registration in accordance with  
225 Subsection [53-10-108](#)(13), the department shall submit to the bureau:



226 (a) the applicant's personal identifying information and fingerprints for a criminal  
227 history search of applicable local, regional, and national databases; and

228 (b) a request for all information received as a result of the local, regional, and  
229 nationwide background check.

230 (6) The department is responsible for the payment of all fees required by Subsection  
231 53-10-108(15) and any fees required to be submitted to the Federal Bureau of Investigation by  
232 the bureau.

233 (7) The department may make rules in accordance with Title 63G, Chapter 3, Utah  
234 Administrative Rulemaking Act, that:

235 (a) determine how the department will assess the employment status of an individual  
236 upon receipt of background information; and

237 (b) identify the appropriate privacy risk mitigation strategy to be used in accordance  
238 with Subsection 53-10-108(13)(b).

239 Section 6. Section 53-10-108 is amended to read:

240 **53-10-108. Restrictions on access, use, and contents of division records -- Limited**  
241 **use of records for employment purposes -- Challenging accuracy of records -- Usage fees**  
242 **-- Missing children records -- Penalty for misuse of records.**

243 (1) As used in this section:

244 (a) "FBI Rap Back System" means the rap back system maintained by the Federal  
245 Bureau of Investigation.

246 (b) "Rap back system" means a system that enables authorized entities to receive  
247 ongoing status notifications of any criminal history reported on individuals whose fingerprints  
248 are registered in the system.

249 (c) "WIN Database" means the Western Identification Network Database that consists  
250 of eight western states sharing one electronic fingerprint database.

251 (2) Dissemination of information from a criminal history record [or], including  
252 information obtained from a fingerprint background check, name check, warrant of arrest  
253 information, or information from division files<sub>2</sub> is limited to:

254 (a) criminal justice agencies for purposes of administration of criminal justice and for  
255 employment screening by criminal justice agencies;

256 (b) (i) agencies or individuals pursuant to a specific agreement with a criminal justice  
257 agency to provide services required for the administration of criminal justice;

258 (ii) the agreement shall specifically authorize access to data, limit the use of the data to  
259 purposes for which given, and ensure the security and confidentiality of the data;

260 (c) a qualifying entity for employment background checks for their own employees and  
261 persons who have applied for employment with the qualifying entity;

262 ~~[(b)]~~ (d) noncriminal justice agencies or individuals for any purpose authorized by  
263 statute, executive order, court rule, court order, or local ordinance;

264 ~~[(c)]~~ (e) agencies or individuals for the purpose of obtaining required clearances  
265 connected with foreign travel or obtaining citizenship;

266 ~~[(d) (i) agencies or individuals pursuant to a specific agreement with a criminal justice~~  
267 ~~agency to provide services required for the administration of criminal justice; and]~~

268 ~~[(ii) the agreement shall specifically authorize access to data, limit the use of the data~~  
269 ~~to purposes for which given, and ensure the security and confidentiality of the data;]~~

270 ~~[(e)]~~ (f) agencies or individuals for the purpose of a preplacement adoptive study, in  
271 accordance with the requirements of Sections 78B-6-128 and 78B-6-130;

272 ~~[(f) (i) agencies and individuals as the commissioner authorizes for the express purpose~~  
273 ~~of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice~~  
274 ~~agency; and]~~

275 ~~[(ii)]~~ (g) private security agencies through guidelines established by the commissioner  
276 for employment background checks for their own employees and prospective employees;

277 ~~[(g) a qualifying entity for employment background checks for their own employees~~  
278 ~~and persons who have applied for employment with the qualifying entity; and]~~

279 (h) state agencies for the purpose of conducting a background check for the following  
280 individuals:

281 (i) employees;

282           (ii) applicants for employment;  
283           (iii) volunteers; and  
284           (iv) contract employees;  
285           (i) governor's office for the purpose of conducting a background check on the  
286 following individuals:  
287           (i) cabinet members;  
288           (ii) judicial applicants; and  
289           (iii) members of boards, committees, and commissions appointed by the governor;  
290           (j) agencies and individuals as the commissioner authorizes for the express purpose of  
291 research, evaluative, or statistical activities pursuant to an agreement with a criminal justice  
292 agency; and  
293           ~~[(h)]~~ (k) other agencies and individuals as the commissioner authorizes and finds  
294 necessary for protection of life and property and for offender identification, apprehension, and  
295 prosecution pursuant to an agreement.  
296           (3) An agreement under Subsection (2)~~[(f) or (2)(h)]~~(j) shall specifically authorize  
297 access to data, limit the use of data to research, evaluative, or statistical purposes, preserve the  
298 anonymity of individuals to whom the information relates, and ensure the confidentiality and  
299 security of the data.  
300           (4) (a) Before requesting information ~~[under Subsection (2)(g)]~~, a qualifying entity  
301 ~~[must]~~ under Subsection (2)(c), state agency, or other agency or individual described in  
302 Subsections (2)(d) through (i) shall obtain a signed waiver from the person whose information  
303 is requested.  
304           (b) The waiver ~~[must]~~ shall notify the signee:  
305           (i) that a criminal history background check will be conducted;  
306           (ii) who will see the information; and  
307           (iii) how the information will be used.  
308           (c) A qualifying entity under Subsection (2)(c), state agency, or other agency or  
309 individual described in Subsections (2)(d) through (g) that submits a request for a noncriminal

310 justice name based background check of local databases to the bureau shall provide to the  
 311 bureau:

312 (i) personal identifying information for the subject of the background check; and  
 313 (ii) the fee required by Subsection (15)(a)(ii).

314 (d) A qualifying entity under Subsection (2)(c), state agency, or other agency or  
 315 individual described in Subsections (2)(d) through (g) that submits a request for a WIN  
 316 database check to the bureau shall provide to the bureau:

317 (i) personal identifying information for the subject of the background check;  
 318 (ii) a fingerprint card for the subject of the background check; and  
 319 (iii) the fee required by Subsection (15)(a)(i).

320 ~~[(e)]~~ (e) Information received by a qualifying entity under Subsection (2)(g)(c), state  
 321 agency, or other agency or individual described in Subsections (2)(d) through (i) may only be:

322 (i) available to ~~[persons]~~ individuals involved in the hiring or background investigation  
 323 of the job applicant or employee; ~~[and]~~

324 (ii) used for the purpose of assisting in making an employment, appointment, selection,  
 325 or promotion decision[-]; and

326 (iii) used for the purposes disclosed in the waiver signed in accordance with Subsection  
 327 (4)(b).

328 ~~[(d) A person]~~ (f) An individual who disseminates or uses information obtained from  
 329 the division under ~~[Subsection (2)(g)]~~ Subsections (2)(c) through (i) for purposes other than  
 330 those specified under Subsection (4)~~[(e)](e)~~, in addition to any penalties provided under this  
 331 section, is subject to civil liability.

332 ~~[(e)]~~ (g) A qualifying entity under Subsection (2)(c), state agency, or other agency or  
 333 individual described in Subsections (2)(d) through (i) that obtains background check  
 334 information ~~[under Subsection (2)(g)]~~ shall provide the ~~[employee or employment applicant]~~  
 335 subject of the background check an opportunity to:

336 (i) review the information received as provided under Subsection (9); and  
 337 (ii) respond to any information received.

338            ~~[(f)]~~ (h) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking  
339 Act, the division may make rules to implement this Subsection (4).

340            ~~[(g)]~~ (i) The division or its employees are not liable for defamation, invasion of  
341 privacy, negligence, or any other claim in connection with the contents of information  
342 disseminated under ~~[Subsection (2)(g)]~~ Subsections (2)(c) through (i).

343            (5) (a) Any criminal history record information obtained from division files may be  
344 used only for the purposes for which it was provided and may not be further disseminated,  
345 except under Subsection (5)(b), (c), or (d).

346            (b) A criminal history provided to an agency pursuant to Subsection (2)~~[(e)]~~(f) may be  
347 provided by the agency to the ~~[person]~~ individual who is the subject of the history, another  
348 licensed child-placing agency, or the attorney for the adoptive parents for the purpose of  
349 facilitating an adoption.

350            (c) A criminal history of a defendant provided to a criminal justice agency under  
351 Subsection (2)(a) may also be provided by the prosecutor to a defendant's defense counsel,  
352 upon request during the discovery process, for the purpose of establishing a defense in a  
353 criminal case.

354            (d) A public transit district, as described in Title 17B, Chapter 2a, Part 8, Public  
355 Transit District Act, that is under contract with a state agency to provide services may, for the  
356 purposes of complying with Subsection 62A-5-103.5(5), provide a criminal history record to  
357 the state agency or the agency's designee.

358            (6) The division may not disseminate criminal history record information to qualifying  
359 entities under Subsection (2)~~[(g)]~~(c) regarding employment background checks if the  
360 information is related to charges:

361            (a) that have been declined for prosecution;

362            (b) that have been dismissed; or

363            (c) regarding which a person has been acquitted.

364            (7) (a) This section does not preclude the use of the division's central computing  
365 facilities for the storage and retrieval of criminal history record information.

366 (b) This information shall be stored so it cannot be modified, destroyed, or accessed by  
367 unauthorized agencies or individuals.

368 (8) Direct access through remote computer terminals to criminal history record  
369 information in the division's files is limited to those agencies authorized by the commissioner  
370 under procedures designed to prevent unauthorized access to this information.

371 (9) (a) The commissioner shall establish procedures to allow an individual right of  
372 access to review and receive a copy of the individual's criminal history report.

373 (b) A processing fee for the right of access service, including obtaining a copy of the  
374 individual's criminal history report under Subsection (9)(a) is \$15. This fee remains in effect  
375 until changed by the commissioner through the process under Section [63J-1-504](#).

376 (c) (i) The commissioner shall establish procedures for an individual to challenge the  
377 completeness and accuracy of criminal history record information contained in the division's  
378 computerized criminal history files regarding that individual.

379 (ii) These procedures shall include provisions for amending any information found to  
380 be inaccurate or incomplete.

381 (10) The private security agencies as provided in Subsection (2)~~(f)(ii)~~(g):

382 (a) shall be charged for access; and

383 (b) shall be registered with the division according to rules made by the division under  
384 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

385 (11) Before providing information requested under this section, the division shall give  
386 priority to criminal justice agencies needs.

387 (12) (a) It is a class B misdemeanor for a person to knowingly or intentionally access,  
388 use, disclose, or disseminate a record created, maintained, or to which access is granted by the  
389 division or any information contained in a record created, maintained, or to which access is  
390 granted by the division for a purpose prohibited or not permitted by statute, rule, regulation, or  
391 policy of a governmental entity.

392 (b) A person who discovers or becomes aware of any unauthorized use of records  
393 created or maintained, or to which access is granted by the division shall inform the

394 commissioner and the director of the Utah Bureau of Criminal Identification of the  
395 unauthorized use.

396 (13) (a) Subject to Subsection (13)(b), a qualifying entity [~~or an entity described in~~  
397 ~~Subsection (2)(b)] under Subsection (2)(c), state agency, or other agency or individual  
398 described in Subsection (2)(d) may request that the division register fingerprints taken for the  
399 purpose of conducting current and future criminal background checks under this section with:~~

400 (i) the WIN Database rap back system, or any successor system;

401 (ii) the FBI Rap Back System; or

402 (iii) a system maintained by the division.

403 (b) A qualifying entity [~~or an entity described in Subsection (2)(b)] under Subsection  
404 (2)(c), state agency, other agency or individual described in Subsection (2)(d) may only make a  
405 request under Subsection (13)(a) if the entity:~~

406 (i) has the authority through state or federal statute or federal executive order;

407 (ii) obtains a signed waiver from the individual whose fingerprints are being registered;

408 and

409 (iii) establishes a privacy risk mitigation strategy to ensure that the entity only receives  
410 notifications for individuals with whom the entity maintains an authorizing relationship.

411 (14) The division is authorized to submit fingerprints to the FBI Rap Back System to  
412 be retained in the FBI Rap Back System for the purpose of being searched by future  
413 submissions to the FBI Rap Back System, including latent fingerprint searches.

414 (15) (a) [~~(i) The~~] For a noncriminal justice applicant:

415 (i) the applicant fingerprint card fee under Subsection (2) is \$20[-]; and

416 (ii) [~~The~~] the name background check fee under Subsection (2) is \$15.

417 [~~(iii)~~] (b) The fee to register fingerprints under Subsection (13)(a)(i) is \$5.

418 [~~(iv)~~] (c) The fees described in [~~this Subsection~~] Subsections (15)(a) and (b) remain in  
419 effect until changed by the division through the process under Section 63J-1-504.

420 [~~(b)~~] (d) Funds generated under this Subsection (15) shall be deposited into the General  
421 Fund as a dedicated credit by the department to cover the costs incurred in providing the

422 information.

423 ~~[(e)]~~ (e) The division may collect fees charged by an outside agency for services  
424 required under this section.

425 (16) For the purposes of conducting a criminal background check authorized under  
426 Subsection (2)(h) or (2)(i), the Department of Human Resource Management, in accordance  
427 with Title 67, Chapter 19, Utah State Personnel Management Act, and the governor's office  
428 shall have direct access to criminal background information maintained under Title 53, Chapter  
429 10, Part 2, Bureau of Criminal Identification.

430 Section 7. Section **59-1-206.1** is enacted to read:

431 **59-1-206.1. Definitions -- Background checks for employees.**

432 (1) As used in this section:

433 (a) "Bureau" means the Bureau of Criminal Identification created in Section [53-10-201](#).

434 (b) "Return information" means the same as that term is defined in 26 U.S.C. Sec.  
435 6103.

436 (2) The commission shall:

437 (a) require the following individuals to submit to a nationwide criminal background  
438 check and ongoing monitoring of that nationwide criminal background check as a condition of  
439 employment:

440 (i) an employee or contractor of the commission that has access to return information  
441 in the custody of the commission, regardless of whether access by the employee or contractor is  
442 authorized; and

443 (ii) an employee or contractor of the commission that has access to information in the  
444 custody of the commission in the Utah Criminal Justice Information System, regardless of  
445 whether access by the employee or contractor is authorized; and

446 (b) require the following individuals to submit to a nationwide criminal background  
447 check and ongoing monitoring of the nationwide criminal background check:

448 (i) an employee or contractor of another state agency, or an employee of the office of  
449 the attorney general, that has access to return information in the custody of the commission,



450 regardless of whether access by the employee or contractor is authorized; and

451 (ii) an employee or contractor of another state agency, or an employee of the office of  
452 the attorney general, that has access to information in the custody of the commission in the  
453 Utah Criminal Justice Information System, regardless of whether access by the employee or  
454 contractor is authorized.

455 (3) The commission shall collect the following from an individual required to submit  
456 to a background check under Subsection (2):

457 (a) the personal identifying information required on the fingerprint card; and

458 (b) consent, on a form specified by the commission, for:

459 (i) an initial fingerprint-based state, regional, and national background check by the  
460 Federal Bureau of Investigation and the bureau upon submission of the application; and

461 (ii) retention of personal identifying information for ongoing monitoring through  
462 registration with the systems described in Subsection [53-10-108](#)(13).

463 (4) For an individual required to submit to a background check under Subsection (2),  
464 the commission shall submit the individual's personal identifying information to the bureau for:

465 (a) an initial fingerprint-based background check by the Federal Bureau of  
466 Investigation and the bureau; and

467 (b) ongoing monitoring through registration with the systems described in Subsection  
468 [53-10-108](#)(13) if the results of the initial background check do not contain disqualifying  
469 criminal history information as determined by the commission.

470 (5) The commission shall:

471 (a) submit any fees required under Subsection [53-10-108](#)(15) to the bureau; and

472 (b) identify the appropriate privacy risk mitigation strategy that will be used to ensure  
473 that the commission only receives notifications for individuals described in Subsection (2).

474 (6) The bureau shall provide all the results from the state, regional, and nationwide  
475 criminal history background checks and monitoring performed under Subsection (4) to the  
476 commission.

477 (7) On or before May 1, 2019, the commission shall:

478 (a) collect the information and consent described in Subsection (3) from individuals  
479 described in Subsection (2)(a) who:

480 (i) were employed by or under contract with the commission prior to May 8, 2018; and

481 (ii) are employed by or under contract with the commission; and

482 (b) submit the information and consent described in Subsection (3) to the bureau for  
483 ongoing monitoring through registration with the systems described in Subsection  
484 53-10-108(13).

485 (8) Upon receipt of criminal history information under Subsection 53-10-108(13)  
486 regarding an individual described in Subsection (2)(a), the commission shall assess the  
487 employment status of the employee or contractor.

488 (9) Upon receipt of criminal history information under Subsection 53-10-108(13)  
489 regarding an individual described in Subsection (2)(b), the commission shall deny the  
490 employee or contractor access to:

491 (a) return information in the custody of the commission; and

492 (b) information in the custody of the commission in the Utah Criminal Justice  
493 Information System.

494 Section 8. Section **63A-2-106** is enacted to read:

495 **63A-2-106. Background checks for employees.**

496 (1) As used in this section, "bureau" means the Bureau of Criminal Identification  
497 created in Section 53-10-201.

498 (2) Beginning July 1, 2018, the division shall require all applicants for the following  
499 positions to submit to a fingerprint-based local, regional, and national criminal history  
500 background check and ongoing monitoring as a condition of employment:

501 (a) assistant directors;

502 (b) contract analysts; and

503 (c) purchasing agents.

504 (3) Each applicant for a position listed in Subsection (2) shall provide a completed  
505 fingerprint card to the division upon request.

506 (4) The division shall require that an individual required to submit to a background  
507 check under Subsection (3) provide a signed waiver on a form provided by the division that  
508 meets the requirements of Subsection 53-10-108(4).

509 (5) For a noncriminal justice background search and registration in accordance with  
510 Subsection 53-10-108(13), the division shall submit to the bureau:

511 (a) the applicant's personal identifying information and fingerprints for a criminal  
512 history search of applicable local, regional, and national databases; and

513 (b) a request for all information received as a result of the local, regional, and  
514 nationwide background check.

515 (6) The division is responsible for the payment of all fees required by Subsection  
516 53-10-108(15) and any fees required to be submitted to the Federal Bureau of Investigation by  
517 the bureau.

518 (7) The division may make rules in accordance with Title 63G, Chapter 3, Utah  
519 Administrative Rulemaking Act, that:

520 (a) determine how the division will assess the employment status of an individual upon  
521 receipt of background information; and

522 (b) identify the appropriate privacy risk mitigation strategy to be used in accordance  
523 with Subsection 53-10-108(13)(b).

524 Section 9. Section **63A-3-201** is amended to read:

525 **63A-3-201. Appointment of accounting and other officers and employees by**  
526 **director of the Division of Finance -- Delegation of powers and duties by director --**  
527 **Background checks.**

528 (1) With the approval of the executive director, the director of the Division of Finance  
529 shall appoint an accounting officer and other administrative officers that are necessary to  
530 efficiently and economically perform the functions of the Division of Finance.

531 (2) The director of the Division of Finance may:

532 (a) organize the division and employ other assistants to discharge the functions of the  
533 division;

534 (b) delegate to assistants, officers, and employees any of the powers and duties of the  
535 office subject to his or her control and subject to any conditions he may prescribe; and

536 (c) delegate the powers and duties of the office only by written order filed with the  
537 lieutenant governor.

538 (3) (a) As used in this Subsection (3):

539 (i) "Public employee" means a person employed by a state agency.

540 (ii) "Public funds" means money, funds, and accounts, regardless of the source from  
541 which the money, funds, and accounts are derived, that are owned, held, or administered by a  
542 state agency.

543 (iii) "Public funds position" means employment with a state agency that requires:

544 (A) physical or electronic access to public funds;

545 (B) performing internal control functions or accounting;

546 (C) creating reports on public funds; or

547 (D) using, operating, or accessing state systems that account for or help account for  
548 public funds.

549 (iv) "State agency" means:

550 (A) an executive branch agency; or

551 (B) a state educational institution with the exception of an institution defined in  
552 Subsection [53B-1-102\(1\)](#).

553 (b) The Division of Finance may require that a public employee who applies for or  
554 holds a public funds position:

555 (i) submit a fingerprint card in a form acceptable to the division;

556 (ii) consent to a criminal background check by:

557 (A) the Federal Bureau of Investigation;

558 (B) the Utah Bureau of Criminal Identification; or

559 (C) another agency of any state that performs criminal background checks; or

560 (iii) consent to a credit history report, subject to the requirements of the Fair Credit  
561 Reporting Act, 15 U.S.C. Sec. 1681 et seq.

562 (c) The Bureau of Criminal Identification shall provide all the results from the state,  
563 regional, and nationwide criminal history background checks to the division.

564 ~~[(c)]~~ (d) The Division of Finance may, in accordance with Title 63G, Chapter 3, Utah  
565 Administrative Rulemaking Act, adopt rules to implement this section.

566 Section 10. Section **63M-2-304** is enacted to read:

567 **63M-2-304. Background checks for employees.**

568 (1) As used in this section, "bureau" means the Bureau of Criminal Identification  
569 created in Section 53-10-201.

570 (2) Beginning July 1, 2018, the governing authority:

571 (a) shall require all applicants for Schedule A positions, in accordance with Section  
572 67-19-15, to submit to a fingerprint-based local, regional, and national criminal history  
573 background check and ongoing monitoring as a condition of employment; and

574 (b) may require applicants for time limited positions to submit to a fingerprint-based,  
575 local, regional, and national criminal history background check and ongoing monitoring as a  
576 condition of employment if the applicant, as an employee:

577 (i) will interact with children, or vulnerable adults as defined in Section 62A-2-120; or

578 (ii) may have access to sensitive personal and financial information.

579 (3) Each individual in a position listed in Subsection (2) shall provide a completed  
580 fingerprint card to the governing authority upon request.

581 (4) The governing authority shall require that an individual required to submit to a  
582 background check under Subsection (3) provide a signed waiver on a form provided by the  
583 governing authority that meets the requirements of Subsection 53-10-108(4).

584 (5) For a noncriminal justice background search and registration in accordance with  
585 Subsection 53-10-108(13), the governing authority shall submit to the bureau:

586 (a) the applicant's personal identifying information and fingerprints for a criminal  
587 history search of applicable local, regional, and national databases; and

588 (b) a request for all information received as a result of the local, regional, and  
589 nationwide background check.

590 (6) The governing authority is responsible for the payment of all fees required by  
591 Subsection 53-10-108(15) and any fees required to be submitted to the Federal Bureau of  
592 Investigation by the bureau.

593 (7) The governing authority may make rules in accordance with Title 63G, Chapter 3,  
594 Utah Administrative Rulemaking Act, that:

595 (a) determine how the governing authority will assess the employment status of an  
596 individual upon receipt of background information; and

597 (b) identify the appropriate privacy risk mitigation strategy to be used in accordance  
598 with Subsection 53-10-108(13)(b).

599 Section 11. Section **67-3-10** is enacted to read:

600 **67-3-10. Background checks for employees.**

601 (1) As used in this section, "bureau" means the Bureau of Criminal Identification  
602 created in Section 53-10-201.

603 (2) Beginning July 1, 2018, the state auditor shall require employees involved in an  
604 audit, investigation, or review requiring access to information and records, the access to which  
605 requires a background check by federal statute or regulation, to submit to a fingerprint-based  
606 local, regional, and national criminal history background check and ongoing monitoring as a  
607 condition of employment.

608 (3) Each individual in a position listed in Subsection (2) shall provide a completed  
609 fingerprint card to the state auditor upon request.

610 (4) The state auditor shall require that an individual required to submit to a background  
611 check under Subsection (3) provide a signed waiver on a form provided by the state auditor that  
612 meets the requirements of Subsection 53-10-108(4).

613 (5) For a noncriminal justice background search and registration in accordance with  
614 Subsection 53-10-108(13), the state auditor shall submit to the bureau:

615 (a) the applicant's personal identifying information and fingerprints for a criminal  
616 history search of applicable local, regional, and national databases; and

617 (b) a request for all information received as a result of the local, regional, and

618 nationwide background check.

619 (6) The state auditor is responsible for the payment of all fees required by Subsection  
620 53-10-108(15) and any fees required to be submitted to the Federal Bureau of Investigation by  
621 the bureau.

622 (7) The state auditor may set office policy that:

623 (a) determines how the state auditor will assess the employment status of an individual  
624 upon receipt of background information; and

625 (b) identifies the appropriate privacy risk mitigation strategy to be used in accordance  
626 with Subsection 53-10-108(13)(b).